

REMARKS

Rejection under 35 USC §102(b)

Claims 3-5, 7-13, 21-24 and 26 are pending in this application. Claims 9, 21-24 and 26 are allowed. Claims 4 and 8 are objected to as being dependent upon a rejected base claim. Claims 3, 5, 7 and 10-13 are rejected under 35 USC §102(b) as being anticipated by Wivell et al. (US 5,599,549, hereinafter "the '549 reference"). The office action states the rejection as follows:

"Wivell et al. teaches a personal cleansing composition comprising an oil phase wherein the oil phase can comprise cholesterol, cholesterol derivatives, silicones, etc. (col. 4, lines 48-56). The composition can contain as little as 0% of a suspending agent (col. 5, lines 53-58). Column 7, line 22 teaches that coloring or lakes can be added to the composition. Column 7, lines 35-38 teach that the composition can be applied to a sponge prior to use on the skin."

This rejection is respectfully traversed. The Applicants respectfully disagree with the current rejection which states that the '549 reference anticipates the claims at issue. First, it is necessary to review the subject matter of the rejected claims. Claim 5, the broadest rejected claim, is directed to a cosmetic or pharmaceutical composition comprising a non-rigid, porous support in which a low viscosity, gellant-containing, otherwise unstable cosmetic or pharmaceutical formulation is incorporated, which composition comprises an oil phase, in which the oil phase comprises a silicone oil. Although the Examiner states that the reference teaches that "the composition can be applied to a sponge prior to use on the skin", a careful reading of the '549 reference will show that qualification "a non-rigid, porous support in which a low viscosity, gellant-containing, otherwise unstable cosmetic or pharmaceutical formulation is incorporated" of present claim 5 is not met by the '549 reference. As discussed in the present specification at page 2, line 26 – page 3, line 2, "...the sponge in the present case is used essentially as a stabilizer for a very low viscosity cosmetic composition which composition would be otherwise unstable. By 'otherwise unstable' as used in the present specification and claims, [it] is meant that a formulation that, because of its low viscosity, is unable to stably maintain a suspension of inorganic pigment; in other words, contained

pigment particles would quickly settle out of the formulation upon resting." It is further stated in lines 10-14 of page 3 of the present specification that "Although levels are low, the presence of the gellant is essential, however, to permit the formulation to set up within the sponge; otherwise, the formulation will simply drip out of the support." On the other hand, the reference discloses in columns 7 and 8 only that the composition may be delivered as a foam, for example, from a nonaerosol pump container, or may be applied directly to the skin or applied to the skin via a washcloth, a sponge, and so forth. Nowhere in the reference is there any disclosure whatsoever of a low viscosity, gellant-containing otherwise unstable cosmetic or pharmaceutical formulation incorporated in a non-rigid porous support as presently claimed.

Thus, a thorough review of the reference shows that the reference fails to teach an essential element of the present claims. It is axiomatic that in order to anticipate, a reference must disclose each and every element of the claim. *In re Paulsen*, 31 USPQ2d 1671 (Fed. Cir. 1994). Absence of a claim element from a prior art reference negates anticipation. *Atlas Powder Co. v. E. I du Pont de Nemours & Co.*, 224 USPQ 409 (Fed. Cir. 1984). In the absence of such a teaching or suggestion in the reference, claims 3, 5, 7 and 10-13 are not anticipated by the '549 reference.

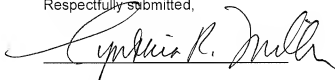
Nevertheless, in order to advance the prosecution of this application, the Applicants have amended rejected claims 5, 7 and 10-13 to depend from allowed claim 9. With these amendments, all of the claims should be allowable. The prompt issuance of a Notice of Allowance is respectfully solicited.

The Applicants, however, reserve the right to file one or more continuing applications for any subject matter described in the present application.

A petition and fee for extension of time for two months is being filed concurrently with this response.

Respectfully submitted,

Date: 5-18-2007

A handwritten signature in cursive script, appearing to read "Cynthia R. Miller", written over a horizontal line.

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